



(21)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945.

No. 967

THE AUTOCAR SALES AND SERVICE COMPANY,
Petitioner,
v.s.

A. G. LEONARD, F. H. PRINCE AND D. H. REIMERS,
Not as Individuals, but as Trustees of the Central
Manufacturing District,
Respondents.

**MOTION FOR LEAVE TO FILE SECOND PETI-
TION FOR REHEARING AND PROFFERED
SECOND PETITION FOR REHEARING.**

J. GLENN SHEEEHAN,
One North LaSalle Street,
Chicago 2, Illinois,
Counsel for Petitioner.

RAYMOND F. HAYES,
One North LaSalle Street,
Chicago 2, Illinois,
Of Counsel.



IN THE
SUPREME COURT OF THE UNITED STATES
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No. 967

THE AUTOCAR SALES AND SERVICE COMPANY,
Petitioner,
vs.

A. G. LEONARD, F. H. PRINCE AND D. H. REIMERS,
NOT AS INDIVIDUALS, BUT AS TRUSTEES OF THE CENTRAL
MANUFACTURING DISTRICT,
Respondents.

MOTION FOR LEAVE TO FILE SECOND
PETITION FOR REHEARING.

To the Honorable, the Acting Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes The Autocar Sales and Service Company, petitioner, and moves the Court for leave to file herein instanter its second petition for rehearing of its petition for a writ of certiorari, because of a change of circumstances as developed in the following proffered second petition for rehearing.

J. GLENN SHEHEE,
Counsel for Petitioner.

RAYMOND F. HAYES,
Of Counsel.

SECOND PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Acting Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, The Autocar Sales and Service Company, again asks a rehearing of its petition for a writ of certiorari, denied April 22, 1946, and shows:

Petitioner's first petition for rehearing in this Court was denied May 20, 1946.

On May 20, 1946, at the hour of 5:15 P. M., a notice was mailed to petitioner by the United States of America and Henry L. Stimson, Secretary of War, extending the term for the use of the condemned property for an additional yearly period beginning July 1, 1946 and ending June 30, 1947. This notice was received by petitioner's counsel at about 11:00 A. M. on May 21, 1946. The original notice so received is attached to the signed copy of this petition, and made a part hereof by reference. The remaining copies of this petition contain a printed copy of such notice.

The Supreme Court of Illinois, in its opinion below (R. 65), stated:

"It does not appear that the United States has extended its term of occupancy for additional periods covering the entire remaining term of the lease or has appropriated the whole of such remaining term; and, until it does do so, there is no basis for any claim that the leasehold estate granted to appellant has ceased to exist or has been destroyed. Whether the lease would be terminated and appellant absolved

from liability thereunder in the event the government should so appropriate the whole of the remaining term of the leasehold estate, is a question not before us and upon which we express no opinion."

It is obvious, therefore, that the governmental appropriation of petitioner's leasehold (which formerly was viewed by the courts below as a "partial" taking) has now become a "complete" taking. The lease here involved expires by its terms on November 30, 1946 (R. 5), and the period of the taking has now been extended to June 30, 1947.

This new fact now brings this cause squarely within the law laid down in *United States v. Petty Motor Co.*, (Nos. 77-83, not yet officially reported, opinions delivered February 25, 1946).

Respondents, in their brief (p. 4) in opposition to the petition for a writ of certiorari, urged that the Supreme Court of Illinois merely confirmed the correctness of the assumption made by this Court in *United States v. General Motors Corporation*, 323 U. S. 373, that the tenant is still obligated to pay rent *where less than the remainder of his term is taken* in the condemnation proceedings. Respondents further urged at the same page that the *Petty Motor* case did not in anyway modify the *General Motors* case, because the *Petty Motor* case "involved a complete taking of the entire interest of the tenants."

Thus, it is clear that the change in circumstances which occurred May 20, 1946, makes the ruling of this Court in the *Petty Motor* case absolutely applicable to and determinative of the issue here presented. In addition to the language quoted from that case by petitioner at pp. 20-21 of its petition for certiorari, the following statements appear at p. 5 of the opinion:

"There was a complete taking of the entire interest of the tenants in the property. * * * We think the

sounder rule under the federal statutes is to treat the condemnation of all interests in a leasehold like the condemnation of all interests in the fee."

The cases are legion which excuse the tenant from the payment of rent under the facts as they now exist. It should suffice to state the general rule laid down in 43 A.L.R. 1176:

"The majority view is taken that when the whole of leased premises is taken under eminent domain proceedings this terminates the lease, and the tenant is under no liability to pay the rent accruing after this event."

In support of this rule numerous decisions are then cited by the annotator, including *Corrigan v. City of Chicago*, 144 Ill. 537, 33 N. E. 746.

It is submitted that this Court, in the exercise of a sound and just discretion, will not permit an aggrieved person to be deprived of a clear right to immunity from an asserted liability, merely because the fact that clarified the right to immunity arose after the trial court's judgment and while this Court still has ample jurisdiction to grant relief.

Wherefore petitioner prays:

1. That the orders of this Court entered April 22, 1946 and May 20, 1946, denying, respectively, petitioner's petition for certiorari and its petition for rehearing, be vacated and set aside.
2. That a writ of certiorari be granted.
3. That this Court
 - (a) Reverse the judgment below; or
 - (b) Reverse the judgment below and order the cause remanded to the appropriate State Court (which petitioner suggests would be the trial court, the reviewing State courts having only appellate

jurisdiction) with directions to reconsider the law of the case as applicable to the change in circumstances.

4. That such other and further relief may be granted as the Court may deem proper.

J. GLENN SHEHEE,
Counsel for Petitioner.

RAYMOND F. HAYES,
Of Counsel.

STATE OF ILLINOIS } ss:
COUNTY OF COOK }

J. GLENN SHEHEE, being first duly sworn, on oath deposes and says that he is counsel for The Autocar Sales and Service Company; that on May 21, 1946, at about the hour of 11:00 A. M., he received through the United States mails from the United States of America and Henry L. Stimson, Secretary of War, a "Notice of Election to Extend Term" the original of such notice, so received, being attached to and immediately following this affidavit, which is appended to the signed copy of the foregoing petition; that true printed copies of such notice are contained in the remaining copies of said petition.

J. GLENN SHEHEE.

Subscribed and Sworn to before me this 22nd day of May, 1946.

F. HRIZAK,
Notary Public.

(Notice follows)



IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA
 For the Northern District of Illinois
 Eastern Division

UNITED STATES OF AMERICA,
Petitioner,
 vs.
 825,755 SQUARE FEET OF LAND AND FLOOR
 SPACE, etc. and ARTHUR G. LEONARD,
et al.,
Defendants.

No. 43 C 270

NOTICE OF ELECTION TO EXTEND TERM.

To:

Lester E. Slosburg, 39 S. LaSalle St. Chicago
 Pritzker & Pritzker, 134 N. LaSalle St. Chicago
 Hoyne, O'Connor, Rubinkam & Melaniphy, 77 W.
 Washington St. Chicago
 Winston, Strawn & Shaw, 38 S. Dearborn St. Chicago
 Brenner & McBride, 100 N. LaSalle St. Chicago
 Hayes, Shehee & Quigley, 1 N. LaSalle St. Chicago
 Goldburg & Weigle, 110 S. Dearborn St. Chicago
 Edmund W. Burke, 100 N. LaSalle St. Chicago
 Harold V. Snyder, 1 N. LaSalle St. Chicago
 Hopkins, Sutter, Halls & DeWolfe, 1 N. LaSalle St.
 Chicago

NOTICE IS HEREBY given that the United States of America and the Secretary of War have determined and elected to extend the term for the use of the space in the Autocar Building described in the Petition for Condemnation here-

tofore filed herein for an additional yearly period beginning July 1, 1946 and ending June 30, 1947.

UNITED STATES OF AMERICA,
Petitioner

HENRY L. STIMSON
Secretary of War

By: J. ALBERT WOLL
United States Attorney

By: ARTHUR A. SULLIVAN
*Special Assistant to the
United States Attorney*

Dated: May 20, A.D. 1946

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

KATHRYN GRODSON, being first duly sworn on oath deposes and says that she personally mailed a true and correct copy of the above Notice by enclosing same in properly addressed envelopes to the above named attorneys, at their respective addresses, and depositing these envelopes in the United States Mail Chute at 111 West Washington Street, Chicago, Illinois on the 20th day of May, A.D. 1946 at 5:15 o'clock P.M.

KATHRYN GRODSON

Subscribed and Sworn to before me this 20th day of May, A.D. 1946.

MARGARET WARGOS
Notary Public.

(Notarial Seal)

